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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,401	04/11/2001	Roman S. Ferber	HOME 0459 PUS	3432

7590

12/04/2002

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EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,401

Applicant(s)

FERBER ET AL.

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern et al. (U.S. Patent No. 4,962,759) in view of McGee (U.S. Patent No. 5,926,909). Stern discloses an air bubble massage mat system comprising an air pump/controller (22), a mat (20), a hose (24), switches (column 4, lines 21-24), and a heating element (120), but does not show a remote control which is used to control air flow. Under applicants own admission air bubble massage mats are well known in the art. McGee teaches a device using a remote control to adjust air flow. It would be obvious to use a remote control because remote controls are old and well known to provide convenience and ease of use.
3. Referring to claim 2, the modified Stern apparatus discloses the remote control maintaining communication through radio waves. The feature of having the remote control communicate through infrared transmitter would be considered a matter of design choice within the level of ordinary knowledge of the skilled artisan.
4. Regarding claims 6-7, limitations regarding various control parameters and programs are considered obvious design choices, well within the knowledge of a skilled artisan to suit various needs and applications as deemed fit by the user.
5. Referring to claims 10-11, Stern, as modified by McGee discloses the remote control having a specific area to be mounted on when not in use (see McGee fig. 1).

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The limitations regarding how the remote control is mounted would be a matter of obvious design choice, well within the knowledge of a skilled artisan.

6. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern and McGee as applied to claim 1, and further in view of Voorlas (U.S. Patent No. 3,420,227). The modified Stern device discloses all the structural limitations except for the flexible material. Voorlas shows a similar device using a flexible mat. It would have been obvious to use a flexible mats because both mats are considered obvious art-recognized massage bubble mat alternatives, known to one of ordinary skill absent any unexpected results.

7. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern and McGee as applied to claim 1 above, and further in view of Kvalvik (U.S. Patent No. 5,715,546). The modified Stern device discloses the claimed invention except for suction cups. Kvalvik teaches suction cups (22) in a bath mat. It would be obvious to one having ordinary skill in the art at the time of invention to provide the modified Stern device with suction cups as taught by Kvalvik in order provide convenient removable attachment means to facilitate stability and minimize slippage.

8. Claims 14-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voorlas in view of Rinaldo '002. See paragraph 5 of the office action dated May 6, 2002.

Response to Amendment

9. The declaration filed on August 7, 2002 under 37 CFR 1.131 is sufficient to overcome the Leung and Gonzalez reference.

Response to Arguments

10. Applicant's arguments filed August 7, 2002 have been fully considered but they are not persuasive. Regarding claims 1-7, 10 and 11, prior art bubble mats disclose use of a corded controller in order to control massage programs. Therefore control parameters would be a matter of obvious design choice.

11. Referring to claims 14-25, applicant has failed to claim that foam blocks are sealed off thereby preventing water from coming in contact with the foam. Furthermore, Rinaldo teaches use of foam for cushioning, and does not relate to the size of foam needed. Therefore arguments are considered moot.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Crienjak et al.	U.S. Patent No. 5,606,767
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Park et al.	U.S. Patent No. 5,839,156
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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SUPERVISORY PATENT EXAMINER
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November 27, 2002